

SUBJECT: CONSUMER PROTECTION – SUBSTITUTION OF PRODUCTS  
ATTORNEY GENERAL – PUBLIC PROTECTION UNIT  
ADOPTED PURSUANT TO 9 V.S.A. SECTION 2453(c)

RULE CP 105  
Effective Date: 1/28/74

CP 105.01 Prohibited Acts  
CP 105.02 Definition

CP 105.01 Prohibited Acts

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a) for a seller or solicitor:

- (a) To advertise or promise prompt delivery unless, at the time of the advertising or promise, the seller or solicitor has taken reasonable action to ensure prompt delivery;
- (b) To fail to deliver by the delivery date goods ordered by mail or otherwise on which payment has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date;
- (c) To accept an order for goods or services where the seller knows that delivery of such goods or services cannot be made within six weeks, unless a later delivery date is agreed upon, in writing if the order is written, by the buyer and the seller; provided, however, that if the seller does not know whether the goods or services can be delivered within six weeks, acceptance of the order shall not be considered to be an unfair or deceptive act if, prior to accepting the order, the seller advises the buyer, in writing if the order is written, that the delivery date is unknown;
- (d) To accept money from a consumer for goods ordered by mail, telephone, or otherwise and then, Unless a later delivery date is specifically agreed upon in writing by the buyer and seller, to permit six weeks to elapse without:
  - (1) Making shipment or delivery of the goods ordered, as long as such goods conform to samples submitted or to specifications upon which the sale is consummated or induced, or to the representations made prior to securing the order; or
  - (2) Making a full refund; or
  - (3) Advising the consumer of the duration of an extended delay and offering to send him an immediate refund, or to send or deliver the ordered goods when they become

available, whichever the consumer so requests, and, in such case, to act according to the consumer's request; or

(4) In the case of mail orders and/or mail delivery, furnishing substitute goods of equivalent or superior value and quality as a good faith substitute. In such case, the consumer shall have the right to return such goods, and if the consumer should return the goods to the seller, the seller shall, within fourteen days of the seller's receipt of the goods, refund the amount of money paid by the consumer, including all shipping costs.

#### CP 105.02 Definition

For the purpose of this rule, goods may not be considered "substitute goods of equivalent or superior value or quality" if they are not substantially similar to the goods ordered, or are not fit for the purposes intended, or if the seller normally offers the substituted goods at a price lower than the price of the goods ordered.